



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

1595 Wynkoop Street  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

**SEP 02 2014**

Ref: 8ENF-RC

**SPECIAL NOTICE LETTER  
URGENT LEGAL MATTER  
PROMPT REPLY NECESSARY  
CERTIFIED MAIL: RETURN RECEIPT REQUESTED  
7008 3230 0003 0725 8495**

Raymond S. Stillwell  
President and General Counsel  
M2 Green Redevelopment, LLC  
601 East 3<sup>rd</sup> Street, Suite 302  
Alton, IL 62002

Re: Special Notice Letter for the Smurfit Stone Mill Site  
Missoula, Missoula County, Montana

Dear Mr. Stillwell:

This letter follows the general notice letter that the U.S. Environmental Protection Agency (EPA) sent to the M2 Green Redevelopment, LLC (M2 Green) on May 2, 2014, in connection with the Smurfit Stone Mill Site (Site), located near Missoula, Montana. In that letter, the EPA notified M2 Green of its potential responsibility under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA" or "Superfund"), 42 U.S.C. § 9607(a) for the cleanup of the Site, including all costs incurred by the EPA in responding to releases at the Site. The EPA is now contacting M2 Green in an attempt to resolve its responsibility at the Site.

**Background**

Based on an extensive review of records related to the release and/or disposal of hazardous substances at the Site, the EPA identified M2 Green as a responsible party (PRP) that contributed hazardous substances to the Site. Under the federal Superfund law, M2 Green and the other PRPs at the Site are responsible for the costs of cleaning up the Site. The EPA has plans to perform a remedial investigation and feasibility study (RI/FS) at the Site in order to identify locations where hazardous waste is located. The final RI/FS report will identify various response actions needed to address hazardous waste at the Site.

### **Special Notice and Negotiation Moratorium**

The EPA has determined that use of the special notice procedures set forth in Section 122(e) of CERCLA, 42 U.S.C. § 9622(e) may facilitate a settlement between M2 Green, the other PRPs, and the EPA for performance of a RI/FS at the Site. A remedial investigation (RI) identifies site characteristics and defines the nature and extent of soil, air, surface water and groundwater contamination at the Site and the risks posed by the Site. A feasibility study (FS) evaluates different clean-up options for the Site.

Under Section 122(e), this letter triggers a sixty (60)-day moratorium on certain EPA response activities at the Site. During this 60-day period, M2 Green and the other PRPs are invited to participate in formal negotiations with the EPA in an effort to reach a settlement to conduct or finance the RI/FS. The 60-day negotiation period ends 60 days after the receipt of this letter. The 60-day negotiation moratorium will be extended for an additional thirty (30) days if PRPs provide the EPA with a "good faith offer" to conduct or finance the RI/FS. Under this 90-day negotiation moratorium, negotiations will conclude on 90 days after the receipt of this letter. If settlement is reached between the EPA and the PRPs within the 90-day negotiation moratorium, the settlement will be embodied in an administrative order on consent (AOC) for RI/FS.

### **Good Faith Offer**

A proposed AOC and Statement of Work (SOW) is enclosed to assist M2 Green in developing a "good faith offer." As indicated, the 60-day negotiation moratorium triggered by this letter is extended for 30 days if the PRPs submit a "good faith offer" to the EPA. A "good faith offer" to conduct or finance the RI/FS is a written proposal that demonstrates the PRPs' qualifications and willingness to conduct or finance the RI/FS and includes the following elements:

A statement of willingness by the PRPs to conduct or finance an RI/FS that is consistent with EPA's Statement of Work and draft AOC and provides a sufficient basis for further negotiations;

A paragraph-by-paragraph response to the EPA's Statement of Work and draft AOC;

A detailed description of the work plan identifying how the PRPs plan to proceed;

A demonstration of the PRPs' technical capability to carry out the RI/FS, including the identification of the firm(s) that may actually conduct the work or a description of the process they will use to select the firm(s);

A demonstration of the PRPs' capability to finance the RI/FS;

A statement of willingness by the PRPs to reimburse the EPA for costs incurred in overseeing the PRPs' conduct of the RI/FS; and

The name, address, and phone number of the party(ies) or steering committee member(s) who will represent the PRPs in negotiations.

### **Demand for Reimbursement of Costs**

With this letter, the EPA demands that you reimburse the EPA for its costs incurred to date, and encourages you to voluntarily negotiate an AOC in which M2 Green and other PRPs agree to perform the RI/FS.

In accordance with Section 104 of CERCLA, 42 U.S.C. § 9604, the EPA has already taken certain response actions and incurred certain costs in response to conditions at the Site. These response actions include site investigations and a removal assessment at the Site under the authority of the Superfund Program. On August 20, 2012, the EPA produced an "Analytical Results Report for a Combined Site Inspection and Removal Assessment" for the Site. Field work and sampling activities were conducted on surface and subsurface soil and sediment and on surface water and groundwater.

The EPA is seeking to recover from M2 Green and other PRPs at the Site, its response costs and all the interest authorized to be recovered under Section 107(a) of CERCLA. To date, the response costs for the Site (from 10/01/1980-03/31/2013) are approximately \$673,809.

Under Section 107(a) of CERCLA, the EPA hereby makes a demand for payment from M2 Green and other PRPs for the above amount plus all interest authorized to be recovered under Section 107(a). A summary of these costs is enclosed as Attachment A.

Some or all of the costs associated with this notice may be covered by current or past insurance policies issued to M2 Green. Most insurance policies will require that the company notify its carrier(s) of a claim against it in a timely manner. To evaluate whether the M2 Green should notify its insurance carrier(s) of this demand, M2 Green may wish to review current and past policies, beginning with the date of M2 Green's first contact with the Smurfit Stone Mill Site, up to the present. Coverage depends on many factors, such as the language of the particular policy and state law.

In the event that M2 Green files for protection in a bankruptcy court, it must include the EPA as creditor, because the EPA has a potential claim against M2 Green. The EPA reserves the right to file a proof of claim or application for reimbursement of administrative expenses.

### **PRP Steering Committee**

To assist PRPs in negotiating with the EPA concerning this matter, the EPA is attaching to this letter a list of the names and addresses of other PRPs to whom it is sending this Notice.

The EPA recommends that all PRPs meet to select a steering committee responsible for representing the group's interests. The EPA recognizes that the allocation of responsibility among PRPs may be difficult. If PRPs are unable to reach consensus among themselves, we encourage the use of the services of a neutral third party to help allocate responsibility. Third parties are available to facilitate negotiations. At the PRPs' request, the EPA will provide a list of experienced third-party mediators, or help arrange for a mediator.

### **Administrative Record**

The documentation supporting the proposal to list the Site on the National Priorities List is available at the Missoula Public Library, 301 E. Main Street, Missoula, Montana 59802. In addition, the EPA will establish an administrative record that contains documents that will serve as the basis for the EPA's selection of a cleanup at the Site. The administrative record will be located at the Missoula Public Library. The administrative record will be available to you and the public for inspection and comment. The administrative record will also be available upon appointment at the Superfund Records Center, EPA Region 8, at 1595 Wynkoop Street, Denver, Colorado 80202. M2 Green may wish to review the documents to assist in responding to this letter, but its review should not delay such response beyond the 60-day period provided by CERCLA.

### **PRP Response and EPA Contact Person**

M2 Green is encouraged to contact the EPA, within 10 days of its receipt of this letter, to indicate its willingness to participate in future negotiations concerning this Site. You may respond individually or through a steering committee if such a committee has been formed. If the EPA does not receive a timely response, the EPA will assume that you do not wish to negotiate a resolution of your liabilities in connection with the Site, and that you have declined any involvement in performing the response activities.

Your response to this Special Notice Letter and the demand for costs included herein, including written proposals to perform the RI/FS for the Site, should be sent to:

U.S. Environmental Protection Agency  
Amelia Piggott, Enforcement Attorney (8ENF-RC)  
1595 Wynkoop Street  
Denver, CO 80202  
[piggott.amelia@epa.gov](mailto:piggott.amelia@epa.gov)  
303-312-6410

The factual and legal discussions in this letter are intended solely to provide notice and information, and such discussions are not to be construed as a final EPA position on any matter set forth herein. Due to the seriousness of the environmental and legal problems posed by the conditions at the Site, the EPA urges that you give immediate attention and prompt response to this letter.

In addition, the EPA has notified the Federal and State Natural Resource Trustees of its intention to perform or enter into negotiations for the performance of response actions at the Site.

If you have any questions regarding the technical aspects of this letter, please contact Sara Sparks, Remedial Project Manager, at 406-782-7415. If you have an attorney handling your legal matters, please direct his or her questions to Amelia Piggott, Enforcement Attorney, at 303-312-6410.

We and our staff look forward to working with you during the coming months.

Sincerely,

Signature  
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not copied from  
original.

Kelcey Land, Director  
RCRA/CERCLA Technical Enforcement Program  
Office of Enforcement, Compliance,  
and Environmental Justice

Andrea Madigan  
Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosures

cc: Montana Governor Steve Bollock  
Robert Collins, MT NR Trustee  
Robert Stewart, DOI  
Amelia Piggott, 8ENF-L  
Sara Sparks, 8MO  
Rob Parker, 8EPR-AR  
Sharon Abendschan, 8ENF-RC  
Dianna Lim, 8EPR-PS  
Elizabeth Tempkin, Tempkin, Wiegla, & Hardt, LLP



List of PRPs Receiving Special Notice Letters  
Regarding Superfund Liability for the Smurfit Stone Site

<b>PRP</b>	<b>Legal Counsel</b>
Rock Tenn James Rubright Chairman and Chief Executive Officer 504 Thrasher Street Norcross, GA 30071	Rock Tenn Roy Cobb, Esq. Senior Environmental Counsel Six City Place Drive Creve Coeur, Missouri 63141 314-656-5364
Rock Tenn Nina E. Butler Senior Vice President & Environmental Counsel 504 Thrasher Street Norcross, GA 30071 770-638-7597	
Montana Rail Link Thomas Walsh, President 101 International Drive Missoula, MT 59808 406-523-1434	Washington Corporations Karl M. Swanson 101 International Drive Missoula, MT 59808 406-523-1399
BNSF Railway Company Matthew Rose Chairman and Chief 2650 Lou Menk Drive Ft. Worth, TX 76131-2830	BNSF Railway Company Brooke Kuhl General Attorney 201 West Railroad Street Missoula, MT 59801 406-543-0019
BNSF Railway Company Mark Engdahl Manager of Environmental Remediation 800 North Lost Chance Gulch, Suite 101 Helena, MT 59601	
M2Green Redevelopment, LLC Raymond S. Stillwell President and General Counsel 601 East 3 <sup>rd</sup> Street, Suite 302 Alton, IL 62002 618-465-7277	Tempkin, Wielga, & Hardt, LLP Elizabeth Tempkin, Esq. Ryan Skylar, Esq. 1900 Wazee Street, Suite 303 Denver, CO 80211 303-292-4922

List of PRPs Receiving Special Notice Letters  
Regarding Superfund Liability for the Smurfit Stone Site

**PRP**

International Paper  
John Vincent Faraci  
Chairman CEO  
6400 Poplar Avenue  
Memphis, TN 38197

**Legal Counsel**

International Paper  
Brian E. Heim, Chief Counsel  
Legal Department  
6400 Poplar Avenue  
Memphis, TN 38197

## Certified By Financial Management Office

## Itemized Cost Summary

SMURFIT STONE MILL, MISSOULA, MT SITE ID = A8 04

FULL COST SUMMARY REPORT - ALL INCLUSIVE - (CRP# 164516)

COSTS FROM 10/01/1980 THROUGH 03/31/2013

REGIONAL PAYROLL COSTS .....	\$46,006.58
HEADQUARTERS PAYROLL COSTS .....	\$1,476.63
REGIONAL TRAVEL COSTS .....	\$5,048.78
ACCEPTANCE CONTRACTS	
CHEMTECH CONSULTING GROUP, INC. (EPW09038) .....	\$5,957.25
ENFORCEMENT SUPPORT SERVICES (ESS)	
TOEROEK ASSOC. INC. (EPR80910) .....	\$22,550.80
SUPERFUND TECHNICAL ASSIST RESPONSE (ST3)	
URS OPERATING SERVICES INC. (EPW05050) .....	\$312,686.86
TECHNICAL AND ANALYTICAL SUPPORT SERVICES	
COMPUTER SCIENCES CORPORATION (EPW10016) .....	\$42,723.26
TECHNICAL SERVICES AND SUPPORT (TSSO)	
COMPUTER SCIENCES CORP (EPW06046) .....	\$1,990.52
CONTRACT LAB PROGRAM (CLP) COSTS	
FINANCIAL COST SUMMARY .....	\$43,643.53
EPA INDIRECT COSTS .....	\$191,724.93
Total Site Costs:	<u><u>\$673,809.14</u></u>

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>X <i>[Signature]</i></p>	
<p>1. Article Addressed to:</p> <p><i>VL</i> SEP 03 2014</p> <p>Raymond S. Stillwell President and General Counsel M2 Green Redevelopment, LLC 601 East 3rd Street, Suite 302 Alton, IL 62002</p>		<p>B. Received by (Printed Name) C. Date of Delivery</p> <p><i>[Signature]</i> SEP 09 2014</p>	
<p>2. Article Number (Transfer from service label)</p> <p>7008 3230 0003 0725 8495</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p>	
<p>3. Service Type</p> <p><input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>PS Form 3811, February 2004</p>		<p>Domestic Return Receipt 102595-02-M-1540</p>	